PART IV

Section 1-A

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON

GOVERNMENT OF MYSORE

NOTIFICATION

LAW DEPARTMENT

No. LAW 17 LCA 66, Bangalore, dated 6—20th June 1966.

Ordered that the Asian Development Bank Bill, 1966 (Bill No. 33 of 1966), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 28th April 1966 be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,
Under Secretary to Government,
Law Department.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 28th April, 1966 :—

BILL NO. 33 OF 1966

A bill to implement the international agreement for the establishment and operation of the Asian Development Bank and for matters connected therewith.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Asian Development Bank Act, 1966.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Agreement" means the Agreement for the establishment and operation of the international body known as the Asian Development Bank;

(*b*) "Bank" means the Asian Development Bank established under the Agreement.

3. *Payments to Bank*—(1) *There shall be paid out of the Consolidated Fund of India, after due appropriation made by Parliament by law in this behalf, all such sums as may, from time to time, be required for the purpose of paying,—*

(*a*) *the subscriptions payable by the Central Government to the Bank under paragraphs* 1, 2 *and* 3 *of Article* 5 *of the Agreement;*

(*b*) *any commission, fees or other charges payable by the Central Government to the Bank under Article* 16 *of the Agreement;*

(*c*) *any sums payable by the Central Government to the Bank under paragraph* 1 *of Article* 25 *of the Agreement.*

(2) *The Central Government may, if it thinks fit so to do, create and issue to the Bank, in such form as it thinks fit, any such non-interest bearing and non-negotiable notes or other obligations as are provided for by paragraph* 3 *of Article* 6 *of the Agreement.*

4. *Reserve Bank to be depository for Bank.*—The Reserve Bank of India shall be the depository of the Indian currency holdings of the Bank.

5. *Conferment of status and certain immunities, exemptions and privileges on Bank and conferment of certain immunities, exemptions and privileges on its officers and employees.*—(1)

Notwithstanding anything to the contrary contained in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in India :

Provided that nothing in Article 56 of the Agreement shall be construed as—

(*a*) entitling the Bank to import into India goods free of any duty of customs without any restriction on their subsequent sale therein ; or

(*b*) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold ; or

(*c*) conferring on the Bank any exemption from duties or taxes which are in fact no more than charges for services rendered.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the Agreement set out therein.

6. *Power to make rules.*—The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

7. *Notifications issued under section 5 and rules made under section 6 to be laid before Parliament.*—Every notification issued under sub-section 2 of section 5 and every rule made under section 6 shall be laid as soon as may be after it is issued or made before each House of Parliameat while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or, as the case may be, in the rule, or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

THE SCHEDULE

(*See* section 5)

PROVISIONS OF THE AGREEMENT WHICH SHALL HAVE FORCE OF LAW

CHAPTER VIII

STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

ARTICLE 48

PURPOSE OF CHAPTER

To enable the Bank effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

ARTICLE 49

LEGAL STATUS

The Bank shall possess full juridical personality and, in particular, full capacity :

(i) to contract ;

(ii) to acquire, and dispose of, immovable and movable property ; and

(iii) to institute legal proceedings.

ARTICLE 50

IMMUNITY FROM JUDICIAL PROCEEDINGS

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connexion with the exercise of its powers to borrow money, to guarantee obligations,

or to buy and sell or underwrite the sale of securities, in which cases actions may brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE 51

Immunity of Assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

ARTICLE 52

Immunity of Archives

The archives of the Bank and, in general, all documents belonging to it, or held by it shall be inviolable wherever located.

ARTICLE 53

Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 54

Privilege for Communications

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

ARTICLE 55

Immunities and Privileges of Bank Personnel

All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank :

(*i*) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity ;

(*ii*) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members ; and

(*iii*) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

ARTICLE 56

Exemption from Taxation

1. The Bank, its assets, property, income and its operations and trasactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political sub-divisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held :

(*i*) which discriminates against such obligation or security solely because it is issued by the Bank ; or

(*ii*) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held :

(*i*) which discriminates against such obligation or security solely because it is guaranteed by the Bank ; or

(*ii*) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 58

WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions, as it may determine to be appropriate in the best interest of the Bank.

STATEMENT OF OBJECTS AND REASONS

In pursuance of an International Agreement to which India will be a signatory, a new financial institution called the Asain Development Bank is being established for accelerating the economic development of Asia and the Far East. Chapter VIII of the Articles of Agreement provides for the granting to the Bank and its officers and employees certain status, immunities, exemptions and privileges in the territory of each member country. Article 57 of the Agreement stipulates that each member country, in accordance with its juridical system, shall promptly take such action as is necessary to make effective in its own territory, the provisions set forth in Chapter VIII of the Agreement. By this Bill, it is proposed to enact the necessary legislation to give effect to the provisions of the said Chapter VIII of the Articles of Agreement. Provision has also been made in the Bill empowering the Central Government to make payments to the Bank towards subscriptions, fees and other charges and for matters connected therewith.

SACHINDRA CHAUDHURI.

NEW DELHI,

The 16th April, 1966.

PRESIDENT'S RECOMMENDATIONS UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of Letter No. 2(39)—66-FBI, dated the 16th April, 1966 from Shri Sachindra Chaudhuri, Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to implement the international agreement for the establishment and operation of the Asian Development Bank in so far as it relates to the status, immunities, exemptions and privileges of the Asian Development Bank, and for matters connected therewith, recommends the introduction of the Bill in the Lok Sabha as required under articles 117(1), 117(3) and 274(1) of the Constitution of India.

FINANCIAL MEMORANDUM

India has been allotted a share of $93 million (Rs. 44.29 crores) in the total capital stock of $1,000 million of the Asian Development Bank and is the second largest Asian Contributor to the capital of the Bank.

2. Under Article 5(1) of the Articles of Agreement of the Bank, only half of each member's capital subscription will be initially payable and the other half shall be subject to calls only as and when required by the Bank to meet its obligations on borrowings of funds for making or participating in direct loans or for guaranteeing loans for economic development. The payment of the paid-in-capital is to be made, under Article 6 of the Agreement, in five equal annual instalments, the first of such instalments being payable within 30 days after the entry into force of the Articles of Agreement or on or before the date of deposit of its instrument of ratification by the member, whichever is later.

3. The Agreement is likely to be entered into force shortly, and on this basis, India's payments towards the capital subscription of the Bank are expected to be phased as shown below —

Amount (U.S. $ million)			Likely dates of payment
in Foreign Exchange	in Indian Rupees	Total	
4.65	4.65	9.3	June—July, 1966
4.65	4.65	9.3	July, 1967
4.65	4.65	9.3	July, 1968
4.65	4.65	9.3	July, 1969
4.65	4.65	9.3	July, 1970
23.25	23.25	46.5	

The remaining amount of $46.5 million will be payable as and when called-up by the Bank for meeting its obligations referred to above.

4. Article 5 of the Agreement also provides that the capital stock of the Bank shall be reviewed at intervals of not less than five years. The earliest of such a review will therefore take place in 1971. If and when such a review leads to an increase in the Bank's capital stock, each member shall be given an opportunity to subscribe to a proportion of the increase in the Bank's capital stock. Any payments that may have to be made by India on account of such an increase, cannot be foreseen at this stage and will in any case be at her own option.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 (2) of the Bill confers power on the Central Government to amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the Agreement set out therein.

2. Clause 6 of the Bill confers power upon the Central Government to make rules for carrying out the purposes of the Act. The immunities, exemptions and privileges of the Asian Development Bank and its officials and employees having been specified in the Schedule to the Bill, occasions for making rules, if any, will be few and far between. The Asian Bank has not yet started its functions. It is not possible, therefore, to envisage at this stage the matters which may have to be provided for by rules. But as the immunities, exemptions and privileges have been specified in the Bill, it is clear that rules, if any, will be confined to matters of procedure and other matters of minor detail relating to the enjoyment of those immunities, exemptions and privileges and their waiver. For instance, if the Bank decides to waive any of the immunities, exemptions or privileges, a rule may be necessary prescribing the manner in which and the officer of the Government to whom such waiver should be communicated.

3. The delegation of legislative power is thus of a normal character.

S. L. SHAKDHER,
Secretary.

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.